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AB-406 (Sub-No. 5X)

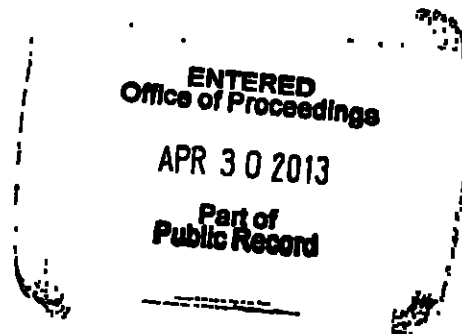
SHORT GRASS PRAIRIE TRAIL, INC.
10553 Kington Ct.
Dodge City, KS 67801
620-255-9418
rpstein@rurallink.net



SUNFLOWER RAIL-TRAILS CONSERVANCY, INC.
P.O. Box 44-2043
Lawrence, KS 66044
316-409-3194
larryross7133@yahoo.com

April 15, 2013

Ms. Cynthia T Brown
Secretary
Surface Transportation Board
395 "E" Street, SW
Washington, DC 20423



RE. Petition to Transfer Holder of Notice of Interim Trail Use/Trail Manager/Responsible Party Status for the Englewood to Protection, Kansas rail line, Status granted in STB Docket No. AB-406 (Sub-No. 5X) Central Kansas Railway, Limited Liability Company—Abandonment Exemption—in Clark and Comanche, Counties, Kansas

Dear Ms. Brown:

Enclosed please find the following pleading: An original and ten copies of a "Joint Petition of the Short Grass Prairie Trail, Inc. and Sunflower Rail-Trails Conservancy, Inc. for Substitution of New Holder of Interim Trail Use/Trail Manager/Responsible Party," along with a Statement of Willingness to Assume Financial Responsibility filed on behalf of Sunflower Rail-Trails Conservancy, Inc

If you have any questions, please feel free to contact us

Sincerely,

Larry Ross
Larry Ross
SRTC President

Richard Stein 4-1-13
Richard Stein
SGPT President

Enc.

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB DOCKET NO. AB-406 (Sub-No 5X)

--ABANDONMENT PETITION--

CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY
IN CLARK AND COMANCHE COUNTY, KS



ENTERED
Office of Proceedings

APR 30 2013

Part of
Public Record

Richard Stein
President
10553 Kington Ct
Dodge City, KS 67801
620-255-9418

Larry Ross
President
Sunflower Rail-Trails
Conservancy, Inc.
P.O. Box 44-2043
Lawrence, KS 66044
316-409-3194

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB DOCKET NO AB-406 (Sub-No 5X)

—ABANDONMENT EXEMPTION—

IN CLARK AND COMANCHE COUNTIES, KANSAS

**JOINT PETITION OF THE SHORT GRASS PRAIRIE TRAIL, INC. AND
SUNFLOWER RAIL-TRAILS CONSERVANCY, INC FOR SUBSTITUTION OF
NEW HOLDER OF INTERIM TRAIL USE/TRAIL MANAGER/RESPONSIBLE
PARTY**

Pursuant to 49 C.F.R. 1152.29(f), the Short Grass Prairie Trail, Inc. ("SGPT") and Sunflower Rail-Trails Conservancy, Inc. ("SRTC") submit this joint petition to the Surface Transportation Board (STB) requesting that the above-captioned proceedings be reopened so that SRTC may be substituted as the Holder of the Interim Trail Use/Trail Manager/Responsible Party for the rail line in the above-captioned proceeding, specifically the rail line located between milepost 136, at or near Protection and milepost 166 plus 1846 feet, at or near Englewood, KS, in Clark and Comanche Counties, Kansas. In support of said petition, the SGPT and SRTC set forth the following to wit

1. By decision and notice of interim trail use or abandonment (NITU) served on July 11, 1997, the STB under U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by the Central Kansas Railway, Limited Liability Company of the above-referenced rail line known as the Englewood Subdivision. (Said NITU is attached hereto as Exhibit A).
2. By letter filed July 13, 1998, S.C. Gordon, General Manager-Real Estate, OmniTrax, Inc. advised the Board that an interim trail use/rail banking agreement was reached pursuant to the National Trails System Act, 16 U.S.C. 1247(d), and conveyance was made to the Iowa Trails Council, Inc (ITC) effective October 1, 1997.
3. By decision and notice of interim trail use or abandonment (NITU) served on February 10, 2000, a replacement NITU applicable to SGPT as interim trail user was issued effective January 1, 2000. (Said NITU is attached hereto as Exhibit B)
4. Central Kansas Railway, Limited Liability Company was subsequently acquired on or about May 31, 2001, by Watco Companies, specifically its Kansas & Oklahoma Railroad, Inc subsidiary.

5 Iowa Trails Council, Inc. (ITC) and Short Grass Prairie Trail, Inc. entered into a Interim Trail Use Agreement or Line Donation Contract on July 1, 1997. Subsequently, ITC furnished SGPT a Donative Bill of Sale dated October 14, 1997 and a Donative Quitclaim Deed dated October 1, 1997, both of which are subject to and reference the Line Donation Contract (both attached hereto as Exhibit C).

Sunflower Rail-Trails Conservancy, Inc. is a duly incorporated Kansas not-for-profit corporation with a corporate address of:

Sunflower Rail-Trails Conservancy, Inc
P O. Box 44-2043
114 Pawnee Ave
Lawrence, KS 66044

Larry Ross, President
Telephone 316-409-3194

6. Attached hereto as Exhibits D and E are the SRTC's Statement of Willingness to Assume Financial Responsibility and a map of the corridor

7. The date for the transition of total responsibility as the new interim trail manager to the SRTC is July 1, 2013.

WHEREFORE, the SGPT and SRTC respectfully request that the STB reopen the above-captioned cause, vacate the existing NITU issued to SGPT, and issue an appropriate NITU to SRTC as the new Holder of Interim Trail Use/Trail Manager/Responsible Party.

Respectfully submitted,

Richard Stein

April 1, 2013

Richard Stein
On behalf of
Short Grass Prairie Trail, Inc

Larry Ross

April , 2013

Larry Ross
On behalf of
Sunflower Rail-Trails Conservancy, Inc.

CERTIFICATE OF SERVICE

A copy of the joint petition filed in AB-406 (Sub-No.5X) was served upon Mr Craig Richey, General Counsel for Watco Companies and Kansas & Oklahoma Railroad, Inc. on April____, 2013.

I hereby attest to the above delivery to Mr Craig Richey.

Larry Ross
Larry Ross
President
Sunflower Rail-Trails
Conservancy, Inc.
P O. Box 44-2043
Lawrence, KS 66044

Date: 04/22/13

EXHIBIT A

SURFACE TRANSPORTATION BOARD DECISION DOCUMENT
Decision Information

Docket Number: **AB_406_5_X**

Case Title: **CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY--
ABANDONMENT EXEMPTION --IN CLARK AND COMANCHE
COUNTIES, KS**

Decision Type: **Decision**

Deciding Body: **Director Of Proceedings**

Decision Summary

Decision Notes: **REOPENED THIS PROCEEDING AND MODIFIED THE NOTICE OF
EXEMPTION SERVED AND PUBLISHED 3/11/96.**

Decision Attachments

[28021.pdf](#)

15 KB

Approximate download time at 28.8 kb: 17 Seconds

Note.

If you do not have Acrobat Reader, or if you have problems reading our files with your current version of Acrobat Reader, the latest version of Acrobat Reader is available free at www.adobe.com.

Full Text of Decision

28021

SERVICE DATE - JULY 11, 1997

DO

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No AB-406 (Sub-No 5X)

CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY--
ABANDONMENT EXEMPTION--IN CLARK AND COMANCHE COUNTIES, KS

Decided July 9, 1997

Central Kansas Railway, Limited Liability Company (CKR) filed a notice of exemption under 49 CFR 1152 Subpart F--*Exempt Abandonments* to abandon a 30.3-mile portion of its line of railroad known as the Englewood Subdivision from milepost 136, at or near Protection, to milepost 166 plus 1846 feet, at or near Englewood, in Clark and Comanche Counties, KS. A notice of exemption was served and published in the *Federal Register* on March 11, 1996 (61 FR 9743) ⁽¹⁾ On May 8, 1996, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing a 180-day period for James D. Jennings, dba Jennings & Co. (Jennings), to negotiate an interim trail use/rail banking agreement with CKR for the right-of-way involved in this proceeding. At the request of Jennings, the negotiation period under the NITU was extended by decisions served October 31, 1996, and April 14, 1997. The last extension expired on July 2, 1997.

On July 2, 1997, the Iowa Trails Council (ITC), a new negotiating party, filed a request to extend the NITU for an additional 90 days, pursuant to section 8(d), of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), so that it could negotiate with CKR for interim trail use. ITC states that an agreement has been reached between CKR and ITC for acquisition of the property by ITC under the Trails Act ⁽²⁾ ITC submitted a statement indicating its willingness to assume full financial responsibility for management of, and liability for payment of taxes for, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way as a trail is subject to future reactivation for rail service. Also on July 2, 1997, CKR indicated its willingness to negotiate with ITC over trail use/rail banking of the line.

Trail use requests are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way ⁽³⁾ and the carrier is willing to enter into negotiations. Inasmuch as CKR has not consummated the abandonment and is willing to negotiate with ITC for the right-of-way, a NITU will be issued, with the trail use negotiation period running for 90 days from the service date of this decision or until October 9, 1997. If no agreement is reached within that time period, CKR may fully abandon the line. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. Upon reconsideration, the notice of exemption served and published in the *Federal Register* on March 11, 1996, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below until

October 9, 1997.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way.

4 Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations of the right-of-way.

5 If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specific date

6 If an agreement for interim trail use/rail banking is reached by October 9, 1997, interim trail use may be implemented. If no agreement is reached by that time, CKR may fully abandon the line

7 The decision is effective on the service date .

By the Board, David M. Konschnik, Director, Office of Proceedings

Vernon A. Williams

Secretary

1. By decision served April 4, 1996, the proceeding was reopened at the request of the Board's Section of Environment Analysis and the exemption was made subject to the condition that prior to commencing salvage operations, CKR shall consult with Kansas Department of Health and Environmental regarding certification requirements

2. ITC states that Jennings and CKR agree to the acquisition of the property by ITC under the Trails Act. By letter filed July 2, 1997, Jennings indicated that it supports the issuance of a NITU between ITC and CKR that would be concurrent with the existing NITU between itself and CKR.

3. See *Rail Abandonments—Supplemental Trails Act Procedures*, 41 C.C.2d 152, 157-58 (1987), *Soo Line Railroad Company—Exemption—Abandonment in Waukesha County, WI*, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987), and *Missouri-Kansas-Texas Railroad Company—Abandonment—in Pettis and Henry Counties, MO*, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991)

EXHIBIT B

30798
DO

SERVICE DATE - FEBRUARY 10, 2000

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE INTERIM TRAIL USE OR ABANDONMENT

STB Docket No AB-406 (Sub-No. 5X)

CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY—ABANDONMENT EXEMPTION—IN CLARK AND COMANCHE COUNTIES, KS

Decided: February 4, 2000

Central Kansas Railway, Limited Liability Company (CKR) filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon a 30.3-mile portion of its line of railroad known as the Englewood Subdivision from milepost 136, at or near Protection, to milepost 166 plus 1846 feet, at or near Englewood, in Clark and Comanche Counties, KS. A notice of exemption was served and published in the Federal Register on March 11, 1996 (61 FR 9743).¹ On May 8, 1996, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing a 180-day period for James D. Jennings, d/b/a Jennings & Co (Jennings), to negotiate an interim trail use/rail banking agreement with CKR for the right-of-way involved in this proceeding. At the request of Jennings, the negotiation period under the NITU was extended by decisions served October 31, 1996, and April 14, 1997.² On July 11, 1997, a NITU was served, which authorized a 90-day period for Iowa Trails Council (ITC), a new negotiation party to negotiate an interim trail use/rail banking agreement with CKR for the 30.3-mile portion of the right-of-way.³

In a joint motion filed on January 24, 2000, ITC and Short Grass Prairie Trail, Inc. (SGPT) request substitution of SGPT as the new interim trail user and the termination of ITC as the interim trail user for the right-of-way effective January 1, 2000, pursuant to 49 CFR 1152.29(f)(1).

SGPT submitted a statement of willingness to assume financial responsibility for interim rail use and rail banking in compliance with 49 CFR 1152.29 and acknowledged that the use of the right-of-way as a trail is subject to possible future reconstruction and reactivation of the right-of-way.

¹ By decision served April 4, 1996, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the exemption was made subject to the condition that prior to commencing salvage operations, CKR shall consult with Kansas Department of Health and Environmental regarding certification requirements.

² The last extension expired on July 2, 1997.

³ By letter filed July 13, 1998, S. C. Gordon, General Manager-Real Estate, OmniTrax, Inc., advised the Board that an interim trail use/rail banking agreement was reached pursuant to the National Trails System Act, 16 U.S.C. 1247(d), and conveyance was made to ITC, effective October 1, 1997.

for rail service. ITC and SGPT have also indicated that responsibility for the right-of-way was transferred to SGPT as of January 1, 2000. The parties' submission meets the requirements of 49 CFR 1152.29(f). Accordingly, the requested relief will be granted.

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on July 11, 1997, is vacated.
3. A replacement NITU applicable to the SGPT as interim trail user is issued, effective January 1, 2000, subject to the environmental conditions imposed in the April 4, 1996 decision.
4. The new trail user is required to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the new user continuing to meet the financial obligations for the right-of-way.
6. If the new trail user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings

Vernon A. Williams
Secretary

EXHIBIT C

DONATIVE BILL OF SALE

IOWA TRAILS COUNCIL, INC., an Iowa nonprofit corporation ("Donor"), does hereby donate, transfer and deliver unto **SHORT GRASS PRAIRIE TRAIL, INC**, a Kansas nonprofit corporation ("Donee"), its successors and assigns, the following described property, to wit.

All of the remaining ballast, bridges, ties and culverts located on that portion of Donor's Englewood Branch from Donor Milepost 166.4 near Englewood, Kansas, to Donor Milepost 13.6 near Protection, Kansas

This Bill of Sale is subject to

1. All of the terms and conditions contained in that certain Line Donation contract between Donor and Donee dated July 1, 1997.
2. The terms and conditions contained in the Decision and Notice of Interim Trail Use or Abandonment served by the Surface Transportation Board ("STB") on May 6, 1996, in Docket No AB-406, Sub-No 5-X, which authorized Donor to discontinue operation over the line of railroad described above, and also the rail-bank interim trail use condition imposed by the STB in said Decision pursuant to Section 3(d) of the National Trails System Act, 16 U.S.C. §1247(d)

DONOR, BY THIS INSTRUMENT, MAKES NO WARRANTY OF ANY KIND WHATSOEVER AS TO QUALITY, MERCHANTABILITY OR SALABILITY, IT BEING UNDERSTOOD THAT DONEE IS ACQUIRING SAID BALLAST, BRIDGES, TIES AND CULVERTS IN A "WHERE IS" AND "AS IS" CONDITION.

IN WITNESS WHEREOF, Donor has duly executed this Bill of Sale as of the

14th day of October, 1997.

Attest:

By Richard Stein
Title President 5601

IOWA TRAILS COUNCIL, INC.

By Don R. Weng
Title EX DIR. IA TR. COUNCIL

EXHIBIT C

DONATIVE QUITCLAIM DEED

IOWA TRAILS COUNCIL, INC., an Iowa nonprofit corporation, ("Grantor"), does hereby donate, remise, release and forever quitclaim unto **SHORT GRASS PRAIRIE TRAIL, INC.**, a Kansas nonprofit corporation ("Grantee"), and unto its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity, of, in and to the real estate ("Property") on that portion of Grantor's Englewood Branch from Grantor's Milepost 166 4 near Englewood, Kansas, to Grantor's Milepost 13 6 near Protection, Kansas, as such Property is located in Clark and Comanche Counties, Kansas, and as more particularly described in Exhibit A, hereto attached and hereby made a part hereof

This deed is made subject to:

- 1 All of the terms and conditions contained in that certain Line Donation Contract between Grantor and Grantee dated July 1, 1997
- 2 The terms and conditions contained in the Decision and Notice of Interim Trail Use or Abandonment served by the Surface Transportation Board ("STB") on May 6, 1996, in Docket No AB-406, Sub-No. 5-X, which authorized Grantor to discontinue operation over the line of railroad described above, and also the rail-bank interim trail use condition imposed by the STB in said Decision pursuant to Section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d)
- 3 All other conditions, restrictions, covenants, reservations, easements, rights and encumbrances affecting the Property, whether recorded or unrecorded.

THIS QUITCLAIM DEED IS MADE ON AN "AS IS, WHERE IS" BASIS WITHOUT ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE WHATSOEVER, EXPRESS OR IMPLIED, CONCERNING THE CONDITION OF THE PROPERTY, AND GRANTEE HEREBY SPECIFICALLY WAIVES ANY IMPLIED WARRANTIES PROVIDED FOR BY KANSAS LAW, IF ANY, INCLUDING ANY AND ALL WARRANTIES REGARDING FITNESS FOR ANY PARTICULAR USE OR PURPOSE WHATSOEVER

IN WITNESS WHEREOF, Grantor has caused this Deed to be duly executed as

of the 1st day of October, 1997

Attest:

IOWA TRAILS COUNCIL, INC

By Richard H. H.
Secretary S.B.P.

By [Signature] Title: EX. DIRECTOR I.T.C.

EXHIBIT D

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and railbanking under section (8)(d) under the National Trails System Act 16 U.S.C. 1247(d), and 49 C.F.R. 1152.29, Sunflower Rail-Trails Conservancy, Inc. is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and payment of all taxes that may be levied or assessed against the right-of-way owned by Short Grass Prairie Trail, Inc. (formerly owned by the Kansas & Oklahoma Railroad, Inc.)

The property, known as the Englewood Subdivision, extends from railroad milepost 136, at or near Protection, KS and milepost 166 plus 1846 feet, at or near Englewood, KS, at total distance of 30.3 miles in Clark and Comanche Counties, Kansas. The right-of-way is part of a railroad proposed for abandonment in STB Docket No. AB-406 (Sub-No. 5X).

A map depicting the right-of-way is attached

Sunflower Rail-Trails Conservancy, Inc. acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reactivation of the right-of-way for rail service.

By my signature below, I certify service upon the Kansas & Oklahoma Railroad, Inc. (Watco Companies, Inc.), 315 W. 3rd St., Pittsburg, KS 66762

Respectfully submitted,



Larry Ross
On behalf of
Sunflower Rail-Trails Conservancy, Inc

April 22 2013

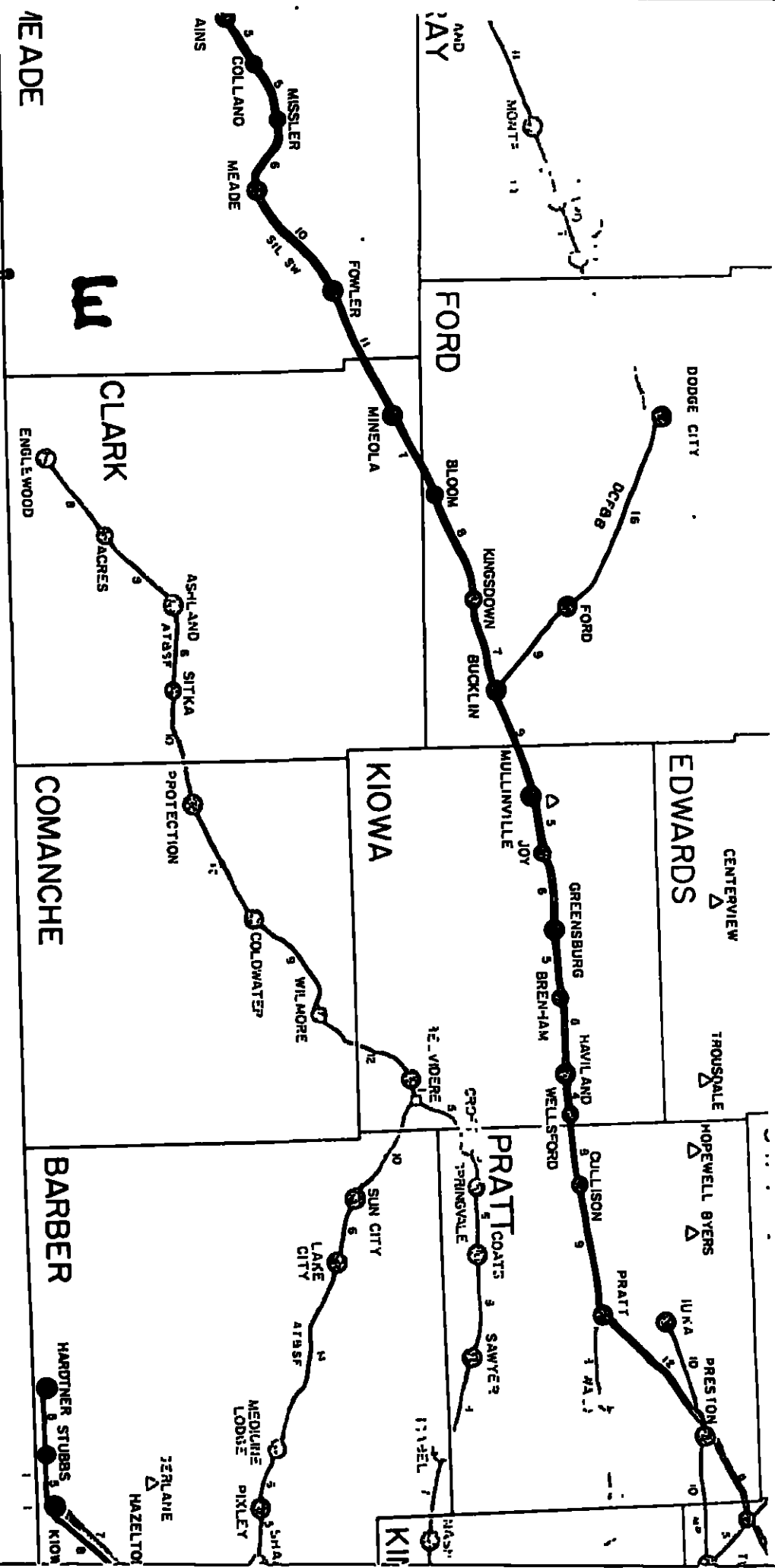


EXHIBIT E

KANSAS STATE RAILROAD

OFFICIAL

